



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

February 7, 2001

Bruce Turnbull, Esquire
Kristin King, Esquire
Weil, Gotshal & Manges
1615 L Street, N.W., Suite 700
Washington, D.C. 20036

RE: MURs 4935 and 5057
Andrew Lowinger

Dear Mr. Turnbull and Ms. King:

On February 5, 2001, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations. Accordingly, the file has been closed in this matter as it pertains to Mr. Lowinger.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Angela Whitehead Quigley".

Angela Whitehead Quigley
Attorney

Enclosure
Conciliation Agreement

RECEIVED
FEC MAIL ROOM
2001 FEB -5 A 10:47

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MURs 4935 and 5057
Andrew Lowinger)

CONCILIATION AGREEMENT

Matter Under Review ("MUR") 4935 was initiated by a signed, sworn and notarized complaint by Sandy Aboulafia. MUR 5057 was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe Andrew Lowinger ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

NOW THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts and violations of law in this matter are as follows:

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 5 2 31 PM '01

1. Dear for Congress, Inc. was the principal campaign committee of Noach Dear with respect to his campaign for the Democratic nomination for the United States House of Representatives (New York 9th District) in the 1998 primary election.

2. Abraham Roth is the Treasurer of Dear for Congress, Inc.

3. A contribution is a gift, subscription, loan, advance, deposit of money, or anything of value made by a person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). A person is prohibited from making contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

4. Respondent contributed an aggregate amount of \$13,000 to Dear for Congress, Inc. for the 1998 election cycle.

5. Shortly prior to March 29, 1998, and August 13, 1998, Respondent contends that he was solicited for contributions by representatives of the Dear for Congress Campaign Committee and was assured by such representatives that the solicited contributions were legal. Based on such representations and solicitations, Respondent contends that he made contributions to Dear for Congress, Inc., without knowledge that the contribution amounts were in excess of legal limits, and without intent to violate the law. Respondent contends that after receiving the contributions, the Dear for Congress Campaign Committee failed to notify Respondent, consistent with 11 C.F.R. § 110.1(k)(3)(ii)(A), that his contributions were excessive and failed to make, consistent with 11 C.F.R. § 110.1(k)(3)(ii)(A), an immediate return or reattribution of the excessive portion of the contribution. Respondent contends that he did not receive a refund check

from Dear for Congress, Inc., until May 10, 1999, when Respondent received a check for \$11,000. Respondent contends that he subsequently deposited the check into his bank account, but that the check was returned for insufficient funds. Respondent contends that Representatives of Dear for Congress, Inc. did not provide any explanation for this refund check, nor notify Respondent at the time of the refund that any violation had occurred.

V. Respondent made an excessive contribution of \$12,000 to Dear for Congress, Inc. (2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of \$6,000, pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may initiate a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties thereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission

X. This Conciliation Agreement constitutes the entire final agreement between the parties on all the matters raised herein, and no other statement, promise, or

agreement, either written or oral, made by either party or by agents of either party, that is not contained in this agreement shall be enforceable.

FOR THE COMMISSION:

Lois Lerner
Acting General Counsel

By: Kim Leslie Bright
Kim Leslie Bright
Associate General Counsel

2/7/01
Date

FOR THE RESPONDENT:

Kristin G. King
Name KRISTIN G. KING
Position Counsel for Respondent

2.1.2001
Date